

REMARKS

In the non-final Office Action, dated September 4, 2008, the Examiner rejects claims 1-5 and 12-26 under 35 U.S.C. § 101 as allegedly being directed to non-statutory subject matter. By way of the present amendment, Applicants have canceled claims 1-5, 16, 23, 25 and 26 without prejudice or disclaimer. Claims 12, 13, 15, 17-22 and 24 have been amended to improve form. Reconsideration of the rejection of pending claims 12-15, 17-22 and 24 is respectfully requested in view of the amendments above and the following remarks.

On page 2, the Office Action rejects pending claims 12-15, 17-22 and 24 under 35 U.S.C. § 101 as allegedly being directed to non-statutory subject matter. Applicants respectfully traverse.

A claim is directed to statutory subject matter under 35 U.S.C. § 101 when the subject matter of the claim satisfies the “machine or transformation” test. In Re Bilski, ____ F.3d ____ (Fed. Cir. 2008)(en banc). To satisfy the “machine or transformation” test, the subject matter of the claim must either 1) be tied to a particular machine or apparatus, or 2) transform a particular article into a different state or thing. Id. It is noted that the “useful, concrete and tangible result” inquiry previously articulated in State St. Bank & Trust Co. v. Signature Fin. Group, 149 F.3d 1368 (Fed. Cir. 1998) and AT&T Corp. v. Excel Communications, Inc., 172 F.3d 1352 (Fed. Cir. 1998) has been expressly disavowed by the Federal Circuit in In Re Bilski and, according to the Federal Circuit, “should no longer be relied on.”

In rejecting the various claims of the present application, the Office Action indicated that each independent claim failed to recite a “useful, concrete and tangible result.” As noted above, the Federal Circuit has expressly indicated that the “useful, concrete and tangible result” inquiry

should no longer be relied on for determining statutory subject matter under 35 U.S.C. § 101, and that the proper test under 35 U.S.C. § 101 is the “machine or transformation” test. Applicants respectfully submit that the subject matter of each of amended independent claims 12 and 18-21 is tied to a particular machine or apparatus (i.e., tied to a node of a quantum cryptographic key distribution (QKD) network), thereby satisfying the “machine or transformation” test. Since each of independent claims 12 and 18-21 is directed to statutory subject matter, Applicants respectfully request that the rejection of claims 12 and 18-21, and respective dependent claims 13, -13, 17, 22 and 24, under 35 U.S.C. § 101 be withdrawn.

In view of the foregoing amendments and remarks, Applicants respectfully request the Examiner's reconsideration of this application, and the timely allowance of the pending claims. To the extent necessary, a petition for an extension of time under 37 CFR § 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account No. 18-1945, Order No. BBNT-P01-015 and please credit any excess fees to such deposit account.

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Respectfully submitted,

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